

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

BUDGET RENT-A-CAR OF WASHINGTON-OREGON, INC.

FILE NO. S-81-036

from an interpretation of the Director
of the Department of Construction and
Land Use

Introduction

Appellant, Budget Rent-A-Car of Washington-Oregon, Inc. (Budget), appeals an interpretation by the Director of the Department of Construction and Land Use (Director) for property at 6000 Roosevelt Way N.E.

The appellant exercised its right to appeal pursuant to the Seattle Municipal Code, Section 24.10.030, as amended.

Parties to the proceedings were: appellant, represented by Asher Wilson, Diamond and Sylvester; and the Director, represented by Charles Duffy.

This matter was heard before the Hearing Examiner on February 8, 1982.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24, as amended, unless otherwise indicated.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The Director issued an interpretation regarding whether the rental of automobiles and trucks is a permitted use on property at 6000 Roosevelt Way N.E. His decision was that the rental of trucks and automobiles not within a garage is not permitted by the zoning of the property. Appellant appealed.

2. The property is zoned Community Business (BC) and Single Family Residence High Density (RS 5000).

3. The BC zoned property is used for display, parking and rental of automobiles and trucks. An office is located on the east property line. A three car garage is located on the RS 5000 zoned portion of the site. Two-thirds of the garage is used for storage associated with the rental business.

4. A "truck and trailer sales lot" is defined at Section 24.08.210(7) as:

An outdoor area used for the display, sale or rental of new or used trucks or truck trailers, where no repair work is done except minor incidental repair to vehicles to be displayed, sold or rented on the premises.

5. An "automobile or house trailer, sales or rental area" is defined at Section 24.08.020(14):

Automobile or house trailer, sales or rental area means an open area used for the display, sale or rental of new or used passenger motor vehicles or house trailers in operable condition, and where no repair work is done except minor incidental repair of vehicles to be displayed, sold or rented on the premises.

6. A truck and truck trailer sales lot is first permitted outright in the CMT zone. Section 24.50.050 states:

The following uses are permitted provided however that they shall be in a completely enclosed building or completely enclosed portion of a building when within fifty feet of any lot in an R zone:

...

C. Truck and truck trailer and house trailer display, rental and sales establishment....

7. An automobile rental and sales area is first permitted outright in the CM zone. Section 24.48.030 provides:

The following uses are permitted:

...

H. Automobile rental and sales, provided that any portion of the area not permanently maintained in a landscaped condition shall be graded, drained and surfaced as required in Section 24.64.150C.

8. An automobile rental garage is permitted in the BC zone if it is in a completely enclosed building or portion of building when within 50 ft. of a lot in a residential zone.

9. An automobile sales area can be permitted in the BC zone by administrative conditional use.

10. Any use not a permitted BC use is a prohibited use in a BC zone.

11. Uses first listed in more intensive zones are not permitted as uses in less intensive zones.

12. The CMT classification is more intensive than CM. The CM classification is more intensive than BC. The BC classification is more intensive than RS 5000.

13. The use of the site for the sale of used cars was established in 1964 by conditional use. The owner leased the site to Budget in 1975 for the current use. City permits were obtained in 1975 to install underground gas tanks and for signs for Budget's operation.

14. The vehicles rented from the subject site include cars, vans and trucks with beds up to 20 ft. Gross weight of the 16-18 ft. bed trucks is around 20,000 lbs. An average of 15-18 vehicles are on the lot at any time with the majority of those cars. Five to seven vehicle are rented each day.

15. A residential zoned lot lies to the east of the property. A 5 ft. high wooden fence on top of a 3 ft. high concrete retaining wall separates the site from that property.

16. The self-moving industry did not offer trucks for rental, except on an experimental basis, until 1966.

17. The Zoning Ordinance was adopted in 1957. An amendment in 1965 added the chapter for the CMT zone.

18. Appellant urges that the rental of vans and small trucks was not contemplated by the Council when the provision was added but instead the provision for trucks was intended to deal with truck trailers known as "semis".

19. Appellant contends that the result of requiring a garage for the rental of cars on the same property where open sales of used cars was a permitted use does not comply with the intention and purpose behind the zoning code.

Conclusions

1. Section 24.10.070, as amended, requires the Hearing Examiner to give substantial weight to the interpretation of the Director. The weight can be overcome by a showing by appellant of clear error in the interpretation.

2. Legislative intent is to be found in the words used. Those words control unless they are ambiguous. Malone v. Seattle, 24 Wn.App. 217 (1979). Appellants have attempted to show ambiguity in the term "trucks" by showing that the self-moving industry did not commonly rent trucks before the CMT chapter was adopted and that the trucks they rent are smaller than the largest trucks available. That argument goes to the "intent", however, not to the word itself since "trucks" clearly encompasses a wide range of sizes. The intent, then, is to cover all vehicles within the common definition of trucks.

3. The Director may not interpret the code in a way to amend the ordinance. See Matter of George, 90 Wn.2d 90 (1978). To read the provision in the manner urged would result in such an amendment.

4. As to the issue of treating the rental of cars different from the sale of cars, the Director is bound by the provision as written. Questions of policy are settled at the time of adoption of the provision. "Administrative authorities are properly concerned with questions of compliance with the ordinance, not with its wisdom." Pearson v. Evans, 51 Wn.2d 574 (1958). Appellant's remedy is to petition the City Council for a text amendment.


5. Appellant has not shown that the interpretation is clearly erroneous, therefore it must stand.

6. After the hearing, appellant moved for an order directing the Director to issue a temporary use permit to allow continuance of the operation on the site until the expiration of Appellant's lease in 1985. Section 3.02.120 permits the Hearing Examiner to take any other action, besides those set out, authorized by ordinance or agency rule. Section 24.10.080, applicable to appeals of interpretations, authorizes the Hearing Examiner to affirm, reverse or modify the Director's interpretation. No power has been conferred which would allow the order requested.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 22nd day of February, 1982.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.